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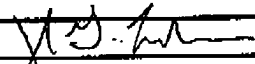Approved for use through 08/30/2003. OMB 0651-0031
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TRANSMITTAL FORM	Application Number	09/774,988
(to be used for all correspondence after initial filing)	Filing Date	01/31/2001
	First Named Inventor	Zeblan
	Art Unit	2154
	Examiner Name	Patel
Total Number of Pages in This Submission 19	Attorney Docket Number	U000-P02026US

ENCLOSURES   *(Check all that apply)*

- [✔] Fee Transmittal Form
  - [✔] Fee Attached
- [ ] Amendment/Reply
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- [ ] After Allowance communication to Technology Center (TC)
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- [✔] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
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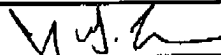- [ ] Other Enclosure(s) (please identify below):
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Date	December 13, 2004

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Appl. No.	:	09/774,968	Confirmation No. 6029
Applicant	:	Zebian	
Filed	:	01/31/2001	
TC/A.U.	:	2154	
Examiner	:	Patel	
Docket No.	:	U000-P02026US	
Customer No.	:	33356	

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APPEAL BRIEF

Dear Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal dated October 11, 2004. The following Appeal Brief is submitted pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Appeals and Interferences.

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(1) REAL PARTY IN INTEREST

The real party in interest is NetZero, Inc.

(2) RELATED APPEALS AND INTERFERENCES

There are no applications currently being appealed that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal

(3) STATUS OF CLAIMS

Claims 1-40 were pending and rejected in the Final Office Action dated 09/08/2004. Claims 26-29 and 33-40 were cancelled via an amendment dated 12/10/2004. Claims 1-25 and 30-32 are pending and are the subject of this appeal.

(4) STATUS OF AMENDMENTS

An amendment canceling claims 26-29 and 33-40 was filed on 12/10/2004.

(5) SUMMARY OF INVENTION

A method for maximizing qualities of a user network access number (NAN) list (p. 16, lines 3-4), the user NAN list comprising plural NANs (p. 17, lines 11-12), the NANs for use by a user's client device (p. 11, lines 5-6) in connecting to a data network under control of a server system (p. 10, lines 15-16), the method comprising: storing in the server system an available NAN list of NANs available for the client device to connect to the data network, wherein the user NAN list comprises a subset of the available NAN list (p. 11, lines 13-17); storing in the server system connection information about connecting from the NANs in the available NAN list to the data network (p. 16, lines 7-10); connecting the client device to the server system (p. 17, lines 3-4); setting the NANs in the user NAN list based upon the available NAN list (p. 17, lines 7-8); setting an

order for selecting the NANs in the user NAN list based upon the connection information (p. 17, lines 15-17), wherein the order is set outside of the user's control (p. 17, lines 17-18); disconnecting the client device from the server system (p. 19, ll. 40-42).

A method of setting an order for using network access numbers (NANs) in a user NAN list (p. 17, lines 15-17), the user NAN list comprising plural NANs (p. 17, lines 11-12), the NANs for use by the user's client device (p. 11, lines 5-6) in connecting to a data network under control of an online service provider server system (p. 10, lines 15-16), wherein a connection from the client device to the data network comprises a front end portion and a back end portion (p. 10, lines 11-14), the front end portion comprising a first connection from the client device to a public switch (p. 14, lines 5-6), and the back end portion comprising a second connection from the public switch to a point of presence under control of one of plural back end providers plus a third connection from the point of presence to the data network (p. 14, lines 16-21, p. 15, lines 1-6), wherein authorization for the back end provider to establish the back end portion is by the online service provider server system (p. 15, lines 6-9), and each NAN is associated with one of the back end providers (p. 14, lines 19-21), the method comprising: storing in the online service provider server system an available NAN list of NANs available for the user's client device to connect to the data network, wherein the user NAN list comprises a subset of the available NAN list (p. 11, lines 13-17); storing in the online service provider server system connection information for connecting from the NANs in the available NAN list to the data network (p. 16, lines 7-10), the connection information comprising at least one of (a) quality of connection information for the back end portion and (b) costs information for the back end portion (p. 15, lines 17-19); establishing a connection from the client device to the online service provider server system (p. 17, lines 3-4); transmitting an identification of the NANs in the user NAN list from the client device to the online service provider server system (p. 20, line 21 – p. 21, line 2); setting an order for selecting the NANs in the user NAN list based upon at least one of (a) the stored quality of connection information for the back end portion and (b) costs information for the back end portion (p. 19, lines 12-13).

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(6) GROUNDS OF REJECTION

Claims 1-11 were rejected under 35 U.S.C. § 102(e) as being anticipated by West et al. (USP 6,081,508).

Claims 12-40 were rejected under 35 U.S.C. § 103(a) as being obvious from West et al. (USP 6,081,508) in view of Dieterman et al. (US Pat. Pub. No. US 2002/0013896).

(7) ARGUMENT

A. Rejection of Claims 1-11 as Unpatentable over West

To anticipate a claim, the reference must teach each and every element of the claim. MPEP § 2131 provides:

> A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. [. . .]
> The identical invention must be shown in as complete detail as is contained in the ...
> claim.

Claim 1 is independent. Claims 2-11 ultimately depend on claim 1. Claim 1 includes at least four limitations not disclosed, taught or suggested by West. Claim 1 recites, "storing in the server system an available NAN list of NANs available for the client device to connect to the data network." The Examiner asserted that West teaches the claimed feature at Fig. 1 element 100 and Fig. 4 element 340. The rejection provides no further argument or explanation. West shows that element 100 is a remote computer and element 340 is a LAN (Figs. 1 and 4). A remote computer and a LAN are apparatuses, devices, and / or structures. As such, they can not teach a step of a method. That is, the cited apparatuses do not teach the claimed storing step. Because the cited portion of West does not teach the claimed feature, the Examiner has not provided the required showing that West teaches what is recited in claim 1. As such, the rejection should be reversed.

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Claim 1 further recites, "wherein the user NAN list comprises a subset of the available NAN list." The Examiner asserted that West teaches the claimed feature at 3:35-45 and Fig. 4 element 334. West, at 3:35-45 and Fig. 4 element 334, describes a management server which stores a dialing database and provides telephone access numbers from the dialing database to a remote computer. The cited portion of West does not teach a user NAN list that is a <u>subset</u> of the available NAN List. Because the cited portion of West does not teach the claimed feature, the rejection should be reversed.

Claim 1 further recites, "storing in the server system connection information about connecting from the NANs in the available NAN list to the data network." The Examiner asserted that West teaches the claimed feature at Fig. 1 element 140, Fig. 4 element 334, 3:35-45, and 3:5-7. West's Fig. 1 element 140 is a corporate communication system. The corporate communication system is made up of a local area network, communication related computers and routing devices coupled to the network. West's Fig. 4 element 334 is a management server. West, at 3:35-45, describes a management server which stores a dialing database and provides telephone access numbers from the dialing database to a remote computer. West, at 3:5-7, describes the remote computer accessing the dialing database to determine the set of access paths for communicating with the computing resource. A corporate communication system and a list of telephone access numbers stored in a management server do not teach the feature "storing in the server system <u>connection</u> <u>information</u> about connecting from the NANs in the available NAN list to the data network." The recited "connection information" includes the cost of the back end connection as well as the quality of the back end connection. Storing a list of telephone access numbers is not the same or analogous to storing cost and quality information about each NAN in an available NAN list. Because the cited portion of West does not teach the claimed feature, the Examiner has not provided the required showing that West teaches what is recited in claim 1. As such, the rejection should be reversed.

Claim 1 further recites, "setting an order for selecting the NANs in the user NAN list based upon the connection information, wherein the order is set outside of the user's control." The Examiner asserted that West, at 2:58-63, teaches this feature. West, at 2:58-63, describes

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determining a set of access paths according to telephone charges associated with the location of the remote computer. The recited "connection information" includes the cost of the back end connection as well as the quality of the back end connection. Determining a set of access paths does not teach or suggest "setting an order for selecting the NANs in the user NAN list based upon the connection information, wherein the order is set outside of the user's control." Because the cited portion of West does not teach the claimed feature, the Examiner has not met the required showing that West teaches what is recited in claim 1. As such, the rejection should be reversed.

By virtue of their dependency on claim 1, claims 2-11 are patentable over West. As such, the anticipation rejection of the claims 2-11 should be reversed.

B. Rejection of Claims 12-25 and 30-32 as Unpatentable over West in view of Dieterman

"To establish a *prima facie* case of obviousness, [. . .] the prior art reference (or references when combined) must teach or suggest all of the claim limitations." *MPEP 706.02(j)*.

Claims 12 and 30 are independent. Claims 13-25 and 31-32 respectively depend on claims 12 and 30. Claim 12 includes at least three limitations not disclosed, taught or suggested by West or Dieterman.

Claim 12 recites, among other features, "storing in the online service provider server system an available NAN list of NANs available for the user's client device to connect to the data network, wherein the user NAN list comprises a subset of the available NAN list." The Examiner asserted that West teaches these features. These features are also recited in claim 1. For the same reasons as set forth in the arguments for claim 1, these features distinguish claim 12 over West. Dieterman fails to cure this deficiency. As such, the combination of cited art fails to teach or suggest the features claimed. Therefore, the rejection should be reversed.

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Claim 12 further recites, "transmitting an identification of the NANs in the user NAN list from the client device to the online service provider server system." The Examiner asserted that this feature is taught at Figs. 2a-2c. No further argument or explanation was provided. West's Figs. 2a-2c illustrate interactive dialog boxes that allow the user to enter a username, password, and information as to where the user is dialing from. Interactive dialog boxes are unrelated to the claimed feature, "transmitting an identification of the NANs in the user NAN list from the client device to the online service provider server system." The user information gathered by the dialog boxes neither teaches nor suggests anything related or similar to a NAN list. Dieterman fails to cure this deficiency. As such, the combination of cited art fails to teach or suggest the features claimed. Therefore, the rejection should be reversed.

To the extent that claim 30 includes similar limitations to claim 12, claim 30 is patentable over West in view of Dieterman for the same reasons that claim 12 is patentable. By virtue of their respective dependency on claims 12 and 30, claims 13-25 and 31-32 are patentable over West in view of Dieterman. As such, the obviousness rejection of the claims 13-25 and 30-32 should be reversed.
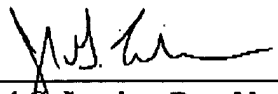
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CONCLUSION AND RELIEF

In view of the foregoing, it is believed that all claims patentably define the subject invention over the prior art of record and are in condition for allowance. The undersigned requests that the Board overturn the rejection of all claims and hold that all of the claims of the above referenced application are allowable.

Respectfully submitted,

Date: December 13, 2004

Joel G. Landau, Reg. No. 54,732

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(8) CLAIMS APPENDIX

The claims involved in this Appeal are as follows:

1. A method for maximizing qualities of a user network access number (NAN) list, the user NAN list comprising plural NANs, the NANs for use by a user's client device in connecting to a data network under control of a server system, the method comprising

storing in the server system an available NAN list of NANs available for the client device to connect to the data network, wherein the user NAN list comprises a subset of the available NAN list

storing in the server system connection information about connecting from the NANs in the available NAN list to the data network

connecting the client device to the server system

setting the NANs in the user NAN list based upon the available NAN list

setting an order for selecting the NANs in the user NAN list based upon the connection information, wherein the order is set outside of the user's control

disconnecting the client device from the server system.

2. The method for maximizing qualities of a user NAN list of claim 1 wherein the order setting step comprises associating ranking information with at least one NAN in the user NAN list.

3. The method for maximizing qualities of a user NAN list of claim 1 wherein the order setting step comprises specifying an actual sequential order of the NANs in the user NAN list.

4.   The method for maximizing qualities of a user NAN list of claim 1 wherein the order setting step comprises providing a sequence list which identifies the order for using the NANs in the user NAN list.

5.   The method for maximizing qualities of a user NAN list of claim 1 wherein the order setting step comprises providing the client device with connection information for the NANs in the user NAN list and an algorithm for selecting the NANs based upon the provided connection information.

6.   The method for maximizing qualities of a user NAN list of claim 1 wherein

the NANs are for providing the client device with a connection to the data network through plural back end networks

each NAN is associated with a one of plural back end providers

each back end network is associated with one of the back end providers

the connection information includes a cost from the back end provider for the client device to utilize the back end network of the back end provider

the back end providers permit a connection through their back end networks to the client device under the authorization of the server system.

7.   The method for maximizing qualities of a user NAN list of claim 1 wherein the connection information includes location information for the NANs in the available NAN list, the method further comprising

determining a location of the client device

determining an available local NAN list based upon the location of the client device and the location information for the NANs in the available NAN list

comparing the available local NAN list with the user NAN list to identify a good NAN in the available local NAN list which is not in the user NAN list

adding the good NAN to the user NAN list.

8. The method for maximizing qualities of a user NAN list of claim 7, wherein the location information for the NANs in the available NAN list comprises an area code.

9. The method for maximizing qualities of a user NAN list of claim 7, wherein before adding the good NAN to the user NAN list, asking the user for permission to add the good NAN to the user NAN list.

10. The method for maximizing qualities of a user NAN list of claim 7, further comprising

comparing the available local NAN list with the user NAN list to identify a bad NAN in the user NAN list which is not in the available local NAN list

deleting the bad NAN from the user NAN list.

11. The method for maximizing qualities of a user NAN list of claim 10, wherein before deleting the bad NAN from the user NAN list, asking the user for permission to delete the bad NAN from the user NAN list.

12. A method of setting an order for using network access numbers (NANs) in a user NAN list, the user NAN list comprising plural NANs, the NANs for use by the user's client device in connecting to a data network under control of an online service provider server system, wherein a connection from the client device to the data network comprises a front end portion and a back end portion, the front end portion comprising a first connection from the client device to a public switch, and the back end portion comprising a second connection from the public switch to a point of presence under control

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of one of plural back end providers plus a third connection from the point of presence to the data network, wherein authorization for the back end provider to establish the back end portion is by the online service provider server system, and each NAN is associated with one of the back end providers, the method comprising

storing in the online service provider server system an available NAN list of NANs available for the user's client device to connect to the data network, wherein the user NAN list comprises a subset of the available NAN list

storing in the online service provider server system connection information for connecting from the NANs in the available NAN list to the data network, the connection information comprising at least one of (a) quality of connection information for the back end portion and (b) costs information for the back end portion

establishing a connection from the client device to the online service provider server system

transmitting an identification of the NANs in the user NAN list from the client device to the online service provider server system

setting an order for selecting the NANs in the user NAN list based upon at least one of (a) the stored quality of connection information for the back end portion and (b) costs information for the back end portion.

13. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein there is a version code associated with the user NAN list for identifying a current version of the user NAN list, and the transmitting step comprises transmitting the version code from the client device to the online service provider server system.

14. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the transmitting step comprises transmitting the user NAN list from the client device to the

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online service provider server system.

15. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the step of ordering is performed by the client device.

16. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the step of ordering is performed by the online service provider server system.

17. The method of ordering a user's network access number NAN list as set forth in claim 12, the order setting step comprising setting the order for selecting the NANs in the user NAN list based upon both the stored quality of connection information and the stored costs information.

18. The method of ordering a user's network access number NAN list as set forth in claim 17, wherein the connection information includes an identification of a back end provider.

19. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the available NAN list identifies a central office which serves each NAN, and the cost information for each NAN includes a cost of providing a connection from the respective central office to the data network.

20. The method of ordering a user's network access number NAN list as set forth in claim 12, wherein the stored quality of connection information comprises reliability data derived from historical quality-of-connection statistics associated with the NANs.

21. The method of ordering a user's network access number NAN list as set forth in claim 20, further including the client device providing the online service provider server system with quality of connection information, and the online service provider server system incorporating the quality of

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connection information from the client device into the historical quality-of-connection statistics.

22. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the order setting step comprises associating ranking information with at least one NAN in the user NAN list.

23. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the order setting step comprises specifying an actual sequential order of the NANs in the user NAN list.

24. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the order setting step comprises providing a sequence list which identifies the order for using the NANs in the user NAN list.

25. The method of ordering a user's network access number NAN list as set forth in claim 12 wherein the order setting step comprises providing the client device with connection information for the NANs in the user NAN list and an algorithm for selecting the NANs based upon the provided connection information.

30. An online service provider server system for controlling a connection between a user's client device and a data network, wherein the user's client device attempts connection to the data network using network access numbers in a user network access number (NAN) list comprising plural NANs, the online service provider server system comprising

    a first memory storing an available NAN list of NANs available for the client device to connect to the data network, wherein the user NAN list comprises a subset of the available NAN list

    a second memory storing connection information about connecting from the NANs in the

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available NAN list to the data network

computer program code which when executed causes the online service provider server system to perform operations including

connecting to the user's client device

setting the NANs in the user NAN list based upon the available NAN list

setting an order for selecting the NANs in the user NAN list based upon the connection information, wherein the order is set outside of the user's control

disconnecting from the client device.

31. The online service provider server system for controlling a connection between a user's client device and a data network of claim 30 wherein the online service provider server system associates ranking information with at least one NAN in the user NAN list.

32. The online service provider server system for controlling a connection between a user's client device and a data network of claim 30 wherein

the NANs are for providing the client device with a connection to the data network through plural back end networks

each NAN is associated with a one of plural back end providers

each back end network is associated with one of the back end providers

the connection information includes a cost from the back end provider for the client device to utilize the back end network of the back end provider

the back end providers permit a connection through their back end networks to the

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client device under the authorization of the server system.

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FEE TRANSMITTAL
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Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($) 500

Complete if Known

Application Number	09/774,968
Filing Date	01/31/2001
First Named Inventor	Zebian
Examiner Name	Patel
Art Unit	2154
Attorney Docket No.	U000-P02026US

METHOD OF PAYMENT (check all that apply)

☐ Check ☑ Credit card ☐ Money Order ☐ Other ☐ None

☑ Deposit Account:

Deposit Account Number	501524
Deposit Account Name	SoCal IP Law Group

The Director is authorized to: (check all that apply)

☑ Charge fee(s) indicated below   ☑ Credit any overpayments

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☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Fee ($)	Small Entity Fee Code	Fee ($)	Fee Description	Fee Paid
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) ($)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	___ -20** = ___	X ___ =	___
Independent Claims	___ - 3** = ___	X ___ =	___
Multiple Dependent		___ =	___

Large Entity Fee Code	Fee ($)	Small Entity Fee Code	Fee ($)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code	Fee ($)	Small Entity Fee Code	Fee ($)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	500
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) ___

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) ($) 500

SUBMITTED BY

Name (Print/Type)	Joel G. Landau	Registration No. (Attorney/Agent)	54,732	Telephone	805-230-1350
Signature				Date	December 13, 2004

(Complete (if applicable))

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.